

MINUTES
WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
August 28, 2017 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Tina Baxter, Terry Dayvolt, Doris Horn, Mike Moesner, Jeff Willis (arrived at 6:02 pm) and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, staff.

MEMBERS ABSENT: None.

MINUTES: Upon a motion by Mike Winge and seconded by Terry Dayvolt, the Minutes of the last regular meeting held July 24, 2017, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

VARIANCES:

BZA-V-17-16

APPLICANT: Chelsea Hochstetler

OWNERS: Larry & Barbara Wood

PREMISES AFFECTED: Property located on the E side of Sun Lane and N side of Pruden Dr. approximately 364' E of the intersection formed by Pruden Dr. & Russel Rd. Lots 5-33 Sunshine Ests., Ohio Twp. 6644 Pruden Dr.

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a single family dwelling on property fronting on a dedicated but not maintained County right of way in an "R-1A" One Family Dwelling (proposed "A" Agriculture zoning district.)
Advertised in the Standard August 17, 2017.

Chelsea Hochstetler, Larry Wood, Barbara Wood and Aaron Howard were present.

The Chairman called for a staff report.

Mrs. Rector stated they have all the return receipts from certified mail of notice of this meeting to the adjacent property owners. She stated this property was part of a recorded subdivision that was vacated by the Plan Commission August 14, 2017 along with some of the roads. She said they have a rezoning that was approved by the County Commissioners today taking the property to Agriculture zoning. She explained the property to the North, East and South are zoned Agriculture and to the west is R-1A being the remaining lots of Sunshine Estates and there is no flood plain on the property. She added this will access off Pruden Drive, as suggested by the County Engineer, and Pruden Drive is a dedicated but not maintained County road way. She said none of the roads within Sunshine Estates were ever constructed and the applicants statement is "*Requesting a variance to construct a single family dwelling with horse barn and arena, accessible by driveway off of dedicated, non-maintained county road, Pruden Dr.*" She

said in the past, the Board has required a Hold Harmless Agreement to be executed if they choose to approve the variance. She added the application is in order.

Ascertaining the applicant had nothing to add, the Chairman called for questions from the Board. He also commented to let the record show Mr. Willis has arrived at the meeting.

Terry Dayvolt asked Mr. Woods where his residence is.

Mr. Woods said he lives to the left of Sun Lane. He said everything that was vacated is to the east of Sun Lane.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Terry Dayvolt made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the access to the property is by pre-existing, dedicated but unmaintained access which was not of creation of the applicant.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.

9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to a Building Permit being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.
 - e) Subject to a Hold Harmless Agreement.

The motion was seconded by Doris Horn and unanimously carried.

Mrs. Rector said they can pick up their approvals on Wednesday and the office will also prepare the Hold Harmless. She said once the Hold Harmless is done she will let them know and they will have time to get their deeds and everything done so they can cross reference it to their deed.

BZA-V-17-17

APPLICANT & OWNERS: Kevin & Teresa O'Connell

PREMISES AFFECTED: Property located on the N side of Marywood Dr. approximately 305' W of the intersection formed by Marywood Dr. & Landview Dr., Lot 40 South Broadview Sec. "A", Ohio Twp. 7844 Marywood Dr.

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County IN to allow an Improvements Location Permit to be issued for an addition to an unattached accessory building creating living quarters on property with an existing residence in an "R-1A" One Family Dwelling zoning district. *Advertised in the Standard August 17, 2017.*

Kevin O'Connell was present.

The Chairman called for a staff report.

Mrs. Rector said they have all the green cards except for Michelle Howard & Sara Fischer/Jase Poag. She said they were mailed to the address on file and within the 21 day deadline. She said there is an existing residence and unattached accessory building on the property and they are proposing to do an 18' x 22' addition to the existing 22' x 22' unattached accessory building and turn it into living quarters for an elderly mother. She explained all surrounding property is zoned R-1A with residences in South Broadview Sec. A subdivision and there is no flood plain. She added there is an existing driveway off Marywood Dr. She said the applicant's statement is *"I would like to convert my unattached garage into a guest cottage for my elderly mother. My goal is to avoid her having to live in a nursing home. Besides the quality of life issue, she has no funds to cover residential long term care. The current garage will require an 18 foot addition in which I plan to put all plumbing for bathroom and kitchen facilities. Indiana American Water has said I can supply water from my existing metered account, Newburgh Sewer*

informed me I will need to pay for an additional tap, but otherwise has no objection. I have spoken with all adjacent neighbors and none have expressed any objection.” She added the Board may choose to add a condition on any approval that once the living quarters are no longer needed they be removed and it would not be for anyone other than the mother and not for rental property.

Mr. O’Connell said the notice sent to Michele Howard was returned unclaimed and the one for Poag – they just didn’t go get it. He said he had nothing else to add but would answer any questions they have.

Terry Dayvolt asked how the water affected the building there.

Mr. O’Connell said as long as things are maintained the way they have been for the last several years they don’t flood. He said there is a drainage ditch down the back that if downstream people don’t keep it cleaned he could have an issue but one of the things he will do with this building is he will berm around it to protect it.

Mrs. Rector said he won’t be able to build anything in the drainage easement. She then asked if there will be a kitchen, living room and bathroom and bedroom.

Mr. O’Connell said it will net out to about 800 square feet and it will be several small rooms because he wants to have a room in case there becomes a need to have someone live there with her to take care of her. He said there will be a bathroom that he doesn’t want to call ADA but it will be designed for her to have privacy and still have it set up the way she might need it to at that point. He said he has been dealing with a lot of elderly people transitioning into this stage of life and he wants to make this one as smooth for everyone as possible.

Mike Winge said if this is passed she said they could put some kind of stipulation on the renting side of this. He asked if they could just do that then he wouldn’t have to spend his money to tear it out and he could use it for personal use but not for rental.

Attorney Doll asked Mr. O’Connell his mother’s name.

Mr. O’Connell said her name is Noreen Jackson.

Attorney Doll said so this residence will only be for Mrs. Jackson and possibly an aide and it won’t be commercially rented or residentially rented for any other purpose.

Mr. O’Connell said that is correct.

Attorney Doll asked if the Board approves this, would he object if those were conditions on the approval.

Mr. O’Connell said he would not object to those conditions.

Mr. Winge said he would hate to see him have to put something in and then have to tear it out.

Mrs. Rector said normally they say if you take the stove out – you just can’t have a full kitchen. She said of course you can have a bathroom in a garage or a sink.

Mr. Winge said well if a guy wants to go out there and whatever – he just wants to make sure we are covered.

Mrs. Rector said we need to be sure it won’t be used as another residence other than for his Mom.

Jeff Valiant asked how soon he plans on starting this project.

Mr. O'Connell said if he gets his approval by Wednesday he will probably be trying to pull a permit on Thursday and there will be a shovel in the ground as soon as he can start.

Ascertaining there were no other comments from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Moesner made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is it is a temporary hardship circumstance that Noreen Jackson, who is the applicant's mother, is in need of residential care but is not capable of affording commercial residential care and this hardship will end when she no longer needs such residence.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month

period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.

10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:

- a) Subject to an Improvement Location Permit being obtained.
- b) Subject to a Building Permit being obtained.
- c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d) Subject to all utility easement and facilities in place.
- e) Subject to the living quarters being removed from unattached accessory building once the mother no longer needs to reside there and not to be used as rental property.

Mike Winge seconded the motion.

Mrs. Rector said she thought they were discussing – could he put it in there subject to the structure no longer being used as a residence except by Noreen Jackson and/or aide and not to be used in the future as rental property.

Mr. O’Connell said they are discussing changing the use of the property at that point – we are not talking about changing the physical structure and having to tear down the addition.

Mrs. Rector said right.

Mike Moesner amended his motion for e.) Subject to the structure no longer being used as a residence except by Noreen Jackson and/or aide and not to be used in the future as rental property. Mike Winge amended his second and the motion unanimously carried.

Mrs. Rector said when he comes in he will need to bring in his Newburgh Sewer permit in order to get the Improvement Location Permit. She added he will also need to go to the Building Department once he get the Improvement Location Permit.

BZA-V-17-18

APPLICANT: Larry E. McNeely

OWNERS: Larry E. McNeely & R & J Trucking LLC, by Julie Hornbrook, Pres.

PREMISES AFFECTED: Property located on the N side of New Harmony Rd. & N side of Hornbrook Dr (private road & easement) approximately 3100’ W of the intersection formed by New Harmony Rd. & SR 61, Boon Twp. *2500 New Harmony Rd. Complete legal on file.*

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a single family dwelling on property not fronting on a county maintained and dedicated right of way with access by easement only in an “A” Agriculture zoning district. *Advertised in the Standard August 17, 2017.*

Attorney Mark Neff and Larry McNeely were present.

The Chairman called for a staff report.

Mrs. Rector stated we have all the green cards from certified mail. She said this property is currently vacant and the surrounding property to the north, west and south is vacant Agriculture and to the east is PUD/R-1D – Hornbrook Haven. She added there is no flood plain on the property. She stated that the property will come off Hornbrook Drive and added Hornbrook Haven is a PUD because they wanted the road to be a private road and so did the County Engineer. She said the private road was listed as an ingress/egress easement to the Hornbrook property as well as to Mr. McNeely by deed and when they did the plat they showed it as a private road they stated on the plat that it is also a 50' ingress/egress easement to Mr. McNeely. She further added the applicants stated use is *“in 1976 Mr. McNeely purchased 22.5 acres from Otis Russel Baker. Also in 1976 Mr. McNeely and the successors of Mr. Hemmings (now R & J Trucking LLC) have shared the roadway easement property. In approximately 1997, the real estate was leased and mined, destroying Mr. McNeely’s homesite. Now after reclamation, Mr. McNeely wants to rebuild a residence on the same 22.5 acres that he has owned or possessed for 41 years. For 41 years Mr. McNeely has had access to his 22.5 acres by the use of the 50’ roadway easement. Mr. McNeely is petitioning to receive a variance so that he can build his residence and access his 22.5 acres by use of the 50’ easement.”* She added when Mr. McNeely’s attorney, Mark Neff filed the application, he submitted a “CONSENT, AUTHORIZATION, AND WAIVER” signed by Mr. McNeely and Julie Hornbrook and Robert Hornbrook consenting to the variance and the Hornbrook’s giving Mr. McNeely authority to represent them at this meeting. This was recorded and a copy of this is in your packets. She added normally if the Board approves a Variance like this they require a Hold Harmless Agreement. She said the application is in order.

Ascertaining the applicants had nothing to add, the Chairman called for questions from the Board.

Doris Horn asked if this has been mined and been reclaimed correct.

Mr. McNeely stated yes.

Terry Dayvolt said he heard they are going to start mining up there again.

Mr. McNeely said he heard that. He said he got a thing in the mail awhile back that it would go south of where Squaw Creek was, basically and back over to Millersburg Road and Squaw Creek Road in that area.

Terry Dayvolt said he knows they are going to do the Ditney Hill area.

Mr. Neff said if he has to sell or lease to the coal company again he will just do it and...but I don’t think he will have to do it again.

Ascertaining there were no further questions from the Board and being no remonstrators present, the Chairman called for a motion.

Doris Horn made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.

3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the access to this site is by pre-existing, non-conforming use that has been utilized by the applicant for the past 41 years.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to a Building Permit being obtained.
 - c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
 - d) Subject to all utility easement and facilities in place.
 - e) Subject to a Hold Harmless Agreement.

The motion was seconded by Mike Winge and unanimously carried.

Mrs. Rector said the staff will try to get the Hold Harmless done by Wednesday as well and they will have to get it signed and so it can be recorded. She asked Attorney Neff if he wanted to review it before it was given to Mr. McNeely. She said it is just a standard hold harmless in case a fire truck or ambulance can't get back there.

Attorney Neff said he didn't need to see it.

SPECIAL USES:

BZA-SU-17-15

APPLICANT: Pampered Pet Nanny LLC, Megan Anderson, Mbr.

OWNER: Steven & Megan Anderson

PREMISES AFFECTED: Property located on the E side of Libbert Rd. approximately 0' NE of the intersection formed by Libbert Rd. & Vann Rd., Ohio Twp. Complete legal on file. *3488 Libbert Rd.*

NATURE OF CASE: Applicant requires a Special Use (SU 24) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an addition to an existing dog boarding facility approved in BZA-SU-11-20 on 9/26/11 and amended in BZA-SU-16-20 on 1/23/17. Addition is for a screened patio in an "A" Agriculture zoning district. *Advertised in the Standard July 13, 2017. Con't from last regular meeting held July 24, 2017.*

Megan Anderson and Dennis Gates were present.

The Chairman called for a staff report.

Mrs. Rector stated they have all the green cards except for Lisa & Daniel Smith & Sharon Jenkins. She said the Post Office website says they were unclaimed and being mailed back to sender.

Mrs. Anderson presented the returned envelope for Sharon Jenkins.

Mrs. Rector said the existing land use is a residence and dog kennel and the property to the north and east west is zoned Agriculture; property to the south is zoned Agriculture, R-1A and C-4 and there is no flood plain on their property. She said there is an existing driveway off Libbert Road. She added a special use was approved for a kennel on this property on September 26, 2011 for previous owner for up to twelve dogs. She said Mrs. Anderson amended the Special Use in BZA-SU-16-20 to allow an additional 5 dogs (total of 17) with an addition of a 20' x 13' room and that was approved January 23, 2017. She said she failed to show this proposed 11' x 13' screened in porch on that drawing. Mrs. Rector said she came into the office on January 25, 2017 and obtained her permit for the proposed addition and then a few days later her contractor went to the Building Department with a different plot plan showing the screened in porch and received a permit from the Building Department for that. She said in June they contacted the office to get the permit for the original addition and the error was discovered and was told they would have to amend the Special Use in order to get everything into compliance. She said this was continued from last month because the notices were not mailed by certified mail with return receipt. She explained they got approved for the addition and didn't think about showing the screened in porch which is being used for the dogs too but it is not adding additional dogs – they just enclosed a patio. She said so they are just asking to amend the Special Use approval to include that 11' x 13' screened in porch.

Attorney Doll said and the 20' x 13' addition.

Mrs. Rector said that was already approved back in January.

Attorney Doll said but they both would be subject to a single application if the Board approves it.

Mrs. Rector asked what he meant.

Attorney Doll said you are asking to amend the one that was approved earlier to add the screened in porch to the....

Mrs. Rector said they are going to say subject to the previous Special Use approvals so basically right now she is only asking for the screened in porch. She said they will have to come to the Plan Commission to get the permit for the porch and to the Building Department to get a permit for the addition so they still have to get permits. Mrs. Rector added they have not had any telephone calls or complaints about this since the patio was screened in.

The applicant had nothing to add.

Ascertaining there were no questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Winge made a motion the findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained for the addition
4. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
5. Subject to any required Building permits being obtained.
6. Subject to no retail sales.
7. No person or persons may be employed in the SU 24 at site other than the resident (residents) of the site for which the SU 24 has been granted.
8. Subject to all other conditions of previous Special Use approvals

The motion was seconded by Doris Horn and unanimously carried.

BZA-SU-17-19

APPLICANT: Custom Sign & Engineering, Inc. by Scott Elpers, owner.

OWNER: North Park Cinemas, Inc. by Michael Steeler, Owner.

PREMISES AFFECTED: Property located on the S side of Bell Oaks Dr. approximately 0' SW of the intersection formed by Bell Oaks Dr. & Wyntree Dr. Lot 8 Highpointe Center E3, Ohio Twp. 8099 Bell Oaks Dr.

NATURE OF CASE: Applicants request a Special Use (SU 8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a 5'x10' electronic message board in a "C-4" General Commercial zoning district. *Advertised in the Standard August 17, 2017.*

Scott Elpers was present.

The Chairman called for a staff report.

Mrs. Rector said they have all the green cards from certified mail except for Charles Titzer. She said we do have the white pay receipt. She said the existing land use is Showplace Cinemas and the surrounding zoning South is R-3 Resort; West is C-4; East is C-4; north is mostly C-4 with one lot being C-3. She said there is no flood plain on the property and there are existing entrances off Bell Oaks and Wyntree Dr. She added there is an existing sign there now and this new sign will be placed on the existing pole. She said they could get a permit for the sign but the message board requires a Special Use and the applicants have answered the use questions. She said the application is in order. She said it is going to be a nice facility when they get done with it.

Scott Elpers said they have invested a lot of money into it. He said they are eager to get this approved because they have moved their opening up to October 10th from the previous Thanksgiving deadline because they are way ahead of schedule so they have to build this sign quickly. Being no questions from the Board, the Chairman called for remonstrators.

Diane Hallmark said she lives on Wyntree and she wants to know where the sign will be located.

Mrs. Rector said it will be where the existing sign is on Bell Oaks Drive. She said the new sign is going on the old pole.

She asked how much taller the new sign will be.

Mrs. Rector said it is 367.12 inches so it is 30.6 feet tall and the existing sign is about 27 feet tall.

Ms. Hallmark said she couldn't understand why she got this letter.

The Chairman said because she is an adjacent property owner.

Ms. Hallmark said she is new to this area and she didn't know.

Scott Elpers said this isn't the only sign going there but it is the only pole sign; the other signs will be on the building.

Ascertaining there were no other remonstrators and being no questions from the Board, the Chairman called for a motion.

Tina Baxter made a motion the findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained.
4. Subject to any required Building Permit being obtained.
5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
6. Subject to no use of the words, “stop”, “danger”, “look”, or any other word which would confuse traffic.
7. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Doris Horn and unanimously carried.

BZA-SU-17-20

APPLICANT: Custom Sign & Engineering, Inc. by Scott Elpers, owner.

OWNER: Gary Herr

PREMISES AFFECTED: Property located on the E side of Squaw Creek Rd. approximately 0' NE of the intersection formed by Squaw Creek Rd. & SR 62, Boon Twp. 4488 SR 62. *Complete legal on file.*

NATURE OF CASE: Applicant requests a Special Use (SU 8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for a 3'x7' electronic message board in a “C-4” General Commercial zoning district. *Advertised in the Standard August 17, 2017.*

Scott Elpers and Gary Herr were present.

The Chairman called for a staff report.

Mrs. Rector said they have all the return receipts from certified mail. She said the current use of the property is a Consignment Store and the zoning to the north is C-3 with a residence; east is M-1; west is M-2 and south is R-1A. She said there is no flood plain on the property which fronts on SR 62 & Squaw Creek Road with a driveway on Squaw Creek Road. She said the billboard is existing and the message board will be a 3' x 7' addition to the existing billboard. She said she checked with the State and they have approval for the sign from them.

Ascertaining there were no questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Moesner made a motion the findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained.
4. Subject to any required Building Permit being obtained.
5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
6. Subject to no use of the words, "stop", "danger", "look", or any other word which would confuse traffic.
7. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Doris Horn and unanimously carried.

ATTORNEY BUSINESS:

Attorney Doll said there are no dates set yet for depositions. He said they just keep getting pushed back either Prime Foods or Warrick Ruined so he doesn't have any dates to give them.

Jeff Valiant asked if there is any type of time restraints for any of this.

Attorney Doll said no, there is to file a judicial review; it had to be filed within 30 days of our decision but once it gets to the courts, it is up to the courts. He said we told them we were going to start objecting to further delays.

Terry Dayvolt asked what is delaying it.

Attorney Doll said Prime Foods didn't get the discovery answers to the interrogatory questions and motions to produce that Warrick Ruined requested in time for reasons he can't explain. He said he thinks it had to do with their attorney blowing the dates, and because of that, Warrick Ruined wanted additional time to determine who their witnesses were going to be. He said we filed our witness and exhibit lists but frankly only Warrick Ruined has filed besides us. He said they just aren't moving it very fast.

Mike Moesner said there is a potential meeting coming up that Prime Foods is going to speak at to explain what they are wanting to do and he was wondering if he should attend or not.

Attorney Doll said he would rather he not attend. He said he doesn't feel it would be a conflict if he would choose to do so. He said his role in this is complete unless the Judge remands it back for us to re-hear it and in his opinion that is a very small possibility and so he would rather he not attend. He said if he feels compelled to do so he understands.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no further business the meeting adjourned at 6:50 p.m.

Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held August 28, 2017.

Sherri Rector, Executive Director